

# **Regulation, Case Law and Use of Shareholders' Agreements in the United States**

**-Lessons for Azerbaijan-**

**by Bahruz Orujov**

**LL.M. Capstone Thesis**

**Supervisor: Professor Tibor Tajti**

**Central European University – Private University**

**Vienna, Austria**

**June 16, 2025**

## COPYRIGHT NOTICE

Copyright © Bahruz Orujov, 2025 (year of submission). “Regulation, Case Law and Use of Shareholders’ Agreements in the United States, Lessons for Azerbaijan” - This work is licensed under Creative Commons Attribution-NonCommercial-NoDerivatives (CC BY-NC-ND) 4.0 International license.



For bibliographic and reference purposes this thesis should be referred to as: Orujov Bahruz. 2025 (year of submission). “Regulation, Case Law and Use of Shareholders’ Agreements in the United States”, “Lessons for Azerbaijan”. LL.M thesis, Legal Department, Central European University, Vienna.

## Table of Contents

<b>ABSTRACT .....</b>	<b>I</b>
<b>AUTHOR’S DECLARATION .....</b>	<b>II</b>
<b>LIST OF ABBREVIATIONS.....</b>	<b>III</b>
<b>INTRODUCTION.....</b>	<b>1</b>
<b>I.    WHY THIS TOPIC? .....</b>	<b>1</b>
<b>II.   THE JURISDICTIONS WITHIN THE PURVIEW OF THE THESIS .....</b>	<b>5</b>
<b>III.   RESEARCH AND METHODOLOGY ISSUES .....</b>	<b>6</b>
<b>IV.   ROADMAP TO THE THESIS.....</b>	<b>8</b>
<b>CHAPTER 1: THE LEGAL FRAMEWORK OF AZERBAIJAN .....</b>	<b>11</b>
<b>1.1. GENERAL OVERVIEW OF SHAREHOLDERS’ AGREEMENTS IN AZERBAIJAN.....</b>	<b>11</b>
<b>1.2. GAPS IN AZERBAIJAN’S LEGAL FRAMEWORK ON SHAREHOLDERS’ AGREEMENTS AND         POSSIBLE SOLUTIONS .....</b>	<b>14</b>
<b>CHAPTER 2 – THE LEGAL FRAMEWORK OF UNITED STATES.....</b>	<b>17</b>
<b>2.1. GENERAL OVERVIEW OF SHAREHOLDERS’ AGREEMENTS LAW IN UNITED STATES ...</b>	<b>17</b>
<b>2.2. MODEL CORPORATION BUSINESS ACT AND DELAWARE GENERAL CORPORATION         LAW .....</b>	<b>22</b>
<b>2.2.1. Model Corporation Business Act (2016 Revision).....</b>	<b>22</b>
<b>2.2.2. Delaware General Corporation Law .....</b>	<b>25</b>
<b>CHAPTER 3 – THE CASE LAW OF THE UNITED STATES.....</b>	<b>28</b>
<b>3.1. SIGNIFICANCE OF SHAREHOLDERS’ AGREEMENTS .....</b>	<b>28</b>
<b>3.2. ENFORCEMENT OF SHAREHOLDERS’ AGREEMENTS.....</b>	<b>31</b>
<b>CONCLUSION.....</b>	<b>38</b>
<b>BIBLIOGRAPHY .....</b>	<b>40</b>

## ABSTRACT

Today Azerbaijan lacks specific regulations governing shareholders' agreements. While the Civil Code (Dec. 28, 1999), serving as the primary legal framework for corporate matters, does contain certain provisions that may assist in the drafting and enforcement of such agreements, they are clearly insufficient, resulting in a regulatory gap. Moreover, the limited number of publications and studies in this area present challenges for attorneys who lack the knowledge to draft, implement, and enforce such agreements. Most importantly, however, they and the regulators may be unaware of the potential benefits these agreements can offer.

This thesis examines the regulation, case law, and application of shareholders' agreements in the United States (U.S.) to identify elements that could be adapted for Azerbaijan. The U.S. has a strong business environment and a robust legal system, which provides valuable insights into how these agreements function. The findings may help Azerbaijani regulators and legal professionals better understand the use and enforcement challenges corollary of shareholders' agreements.

To achieve these aims, this thesis starts with the exploration of the legal framework of Azerbaijan, focusing on the Azerbaijan Civil Code, to identify provisions applicable to shareholders' agreements, while also investigating the existing gaps and loopholes that may pose challenges to their implementation and enforcement. Here, the central goal is to see whether introduction of prescriptive provisions with specific content may be advisable in Azerbaijan. To answer this query, the thesis examines the available statutory and case law applicable to shareholders' agreements in the two competing models of the United States, the Model Business Corporation Act as implemented in a select number of States, and that of the State of Delaware and some of its followers as a benchmark in corporate matters.

## **AUTHOR'S DECLARATION**

I, the undersigned, Bahruz Orujov, candidate for the LL.M degree in Global Business Law and Regulations declare herewith that the present thesis titled “Regulation, Case Law and Use of Shareholders’ Agreements in the United States, -Lessons for Azerbaijan-” is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person’s or institution’s copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 12 June 2025

Bahruz Orujov

## List of Abbreviations

BP	British Petroleum
Del.	Delaware
DGCL	Delaware General Corporation Law
MBCA	Model Business Corporation Act
OJSC	Open Joint Stock Company
SOCAR	State Oil Company of the Azerbaijan Republic
U.S	United States

## Introduction

### i. Why this topic?

A key area of investigation focuses on identifying whether any legal firm in Azerbaijan has ever been engaged in drafting, litigating or implementing Shareholders' Agreements and if there are any shareholders' agreements concluded among their clients. My investigation reveals that the government of Azerbaijan holds the largest ownership stakes in major corporations, which serves as a unique characteristic of the nation's economic and legal framework. In addition, various entities, including financial institutions, emerge as principal shareholders, while individual private investors, though currently limited in influence, are increasingly becoming significant stakeholders.

For example, BP, SOCAR, and the Azerbaijan Investment Company (AIC) have entered into a shareholders' agreement to create a joint venture named Shafag (Jabrayil) Solar Limited, which will oversee the 240MW Shafag solar initiative in Jabrayil, Azerbaijan. This initiative intends to implement the so called "Virtual Power Transfer Arrangement" to deliver renewable energy to the Sangachal terminal. In this partnership, BP possesses a 50.01% stake, SOCAR holds 39.99%, and AIC retains 10%.<sup>1</sup> Another notable instance is the agreement between Azerbaijan Investment Company OJSC and Hungary's HELL Group Company, which signifies a pivotal advancement in enhancing economic collaboration and investment opportunities between Azerbaijan and Hungary.<sup>2</sup>

---

<sup>1</sup> BP, 'BP, SOCAR and Azerbaijan Investment Company Sign Shareholders' Agreement' (BP, 1 February 2024) [https://www.bp.com/en\\_az/azerbaijan/home/news/press-releases/bp-SOCAR-and-Azerbaijan-Investment-Company-sign-shareholders-agreement.html](https://www.bp.com/en_az/azerbaijan/home/news/press-releases/bp-SOCAR-and-Azerbaijan-Investment-Company-sign-shareholders-agreement.html) accessed 06 June 2025.

<sup>2</sup> Azerbaijan Investment Company OJSC, 'Shareholders' Agreement Was Signed Between Azerbaijan Investment Company OJSC and Hungary's HELL Group Company' <https://www.aic.az/en/news/1302/shareholders-agreement-was-signed-between-azerbaijan-investment-company-ojsc-and-hungarys-hell-group-company> accessed 06 June 2025.

The Articles are public documents registered at the Companies Registry and available for public inspection.<sup>3</sup> In contrast, Shareholders' Agreements are typically not registered and remain private and confidential, with no legal requirement to file and make them publicly accessible. This confidentiality allows shareholders to agree on sensitive terms without public disclosure.<sup>4</sup> The Republic of Azerbaijan's Ministry of Economy includes the State Tax Service, which acts as a central executive body dedicated to overseeing the registration of legal entities.<sup>5</sup> Users can access online resources to submit details regarding a legal entity, enabling them to obtain comprehensive information about that entity.<sup>6</sup> Regrettably, in the presence of any existing shareholders' agreements, access through these tools remains restricted. Users are limited to viewing only fundamental information regarding the companies.

However, the confidential characteristics of these agreements frequently render them obscure, creating substantial obstacles for analyzing and overseeing their implementation and enforcement.<sup>7</sup> This deficiency in transparency hinders efforts to investigate and comprehend the functioning of these accords. Generally, conflicts arising from these contracts tend to stay private because the parties involved are hesitant to reveal specifics regarding the disputes. The concept of shareholders' agreement is relatively novel in Azerbaijan, and the country has not yet effectively developed its legal framework to enhance this aspect. Consequently, Azerbaijan lacks specific regulations governing shareholders' agreements, with the civil code serving as the primary legal framework for corporate matters.<sup>8</sup> While certain provisions within this code may assist in the execution and enforcement of such agreements, it cannot be asserted that the necessary legal infrastructure is fully established. A notable concern has emerged: Azerbaijan

---

<sup>3</sup> Clyde & Co, 'The Role of a Shareholders' Agreement in Corporate Governance' (Clyde & Co, October 2024) <https://www.clydeco.com/en/insights/2024/10/the-role-of-a-shareholders-agreement> accessed 06 June 2025.

<sup>4</sup> *ibid.*

<sup>5</sup> Taxes.gov.az, 'Umumi Məlumat' <https://www.taxes.gov.az/en/page/umumi-melumat> accessed 06 June 2025.

<sup>6</sup> e-taxes.gov.az, 'Commercial Checker' <https://new.e-taxes.gov.az/etaxes/legal-entity-info> accessed 06 June 2025

<sup>7</sup> Emin Karimov, 'Shareholders' Agreement in Azerbaijani Law' (2012) 1 Baku Law Journal 10.

<sup>8</sup> *ibid.*

does not possess adequate regulations for these kinds of agreements, leading to a deficiency in regulatory oversight.<sup>9</sup>

The need for enhanced regulation of participant relationships in Azerbaijan stems from the deficiencies in the existing corporate laws, which restrict the potential for participant engagement.<sup>10</sup> Currently, there is an absence of a legal structure that facilitates the regulation of corporate interactions through contractual agreements. Consequently, shareholders' agreements that involve numerous foreign entities must rely on the legal frameworks of other jurisdictions.<sup>11</sup> While it is possible to conclude shareholders' agreements under local laws, the parties involved face significant limitations in negotiating the terms of these agreements and in their ability to enforce them in the event of conflicts. Modifying and enhancing local corporate laws can facilitate the increased adoption of shareholders' agreements, thereby ensuring that local regulations govern the business interactions among participants.<sup>12</sup>

The oil and gas industry has been instrumental in promoting the creation of numerous new enterprises, a trend that continues to yield substantial benefits for the economy of the nation. This sector has actively driven the establishment of new corporate entities. While the organizational structures of these entities differ, a significant number of these corporations predominantly depend on equity securities, specifically shares.

With the rise of equity capital as a crucial financial tool in developing markets, implementing regulations that safeguard the rights of minority shareholders and investors will facilitate companies' ability to tap into global equity funding.<sup>13</sup> Nevertheless, a high concentration of ownership, combined with deficiencies in the legal system and ineffective enforcement, can

---

<sup>9</sup> Emin Karimov, 'Shareholders' Agreement in Azerbaijani Law' (2012) 1 Baku Law Journal 10.

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> Abdullah Barwari, Luqman Saeed and Mustafa Aree, 'The Protection of Minority Shareholders within the Legal Framework: Conceptual Evidence from Turkey' (2019) 9 Journal of Advanced Research in Law and Economics 1884.

create circumstances where the dominant majority exploits corporate power, undermining the rights of minority stakeholders.<sup>14</sup>

While traditional examinations of private ordering typically emphasize the elements found within a corporation's charter and bylaws, there is a growing trend among private corporations to adopt an alternative governance structure—through utilization of shareholders' agreements.<sup>15</sup> These agreements have largely evaded thorough judicial and scholarly analysis; however, certain judicial opinions indicate that corporate stakeholders possess increased flexibility to pursue private ordering via shareholders' agreements.<sup>16</sup> Furthermore, these agreements may serve as a means to circumvent certain mandatory provisions established by corporate law.<sup>17</sup>

“Shareholders’ agreement, also known as extra-statutory agreements or side letters and commonly referred to as “SHA,” embody a crucial manifestation of individual autonomy and contractual liberty, which are fundamental principles of private law within a democratic society and a free market economy.”<sup>18</sup>

These agreements provide stockholders with rights such as modifying board authority, overseeing share distribution approvals, and managing the selection and removal of directors or officers. They also govern voting rights, including weighted voting and proxies, and set guidelines for property transfers and interactions among shareholders, directors, and employees.<sup>19</sup> Additionally, they delegate management responsibilities and dispute resolution,

---

<sup>14</sup> i Abdullah Barwari, Luqman Saeed and Mustafa Aree, ‘The Protection of Minority Shareholders within the Legal Framework: Conceptual Evidence from Turkey’ (2019) 9 Journal of Advanced Research in Law and Economics 1886.

<sup>15</sup> Jill E Fisch, Private Ordering and the Role of Shareholder Agreements (Law Working Paper No 538/2020, ECGI, August 2020) 1.

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

<sup>18</sup> Sandra Brožová, ‘The Nature and Legal Effects of Shareholders Agreements in the Czech and Slovak Private Law and its Interpretation’ (2019) 15(31) European Scientific Journal 1.

<sup>19</sup> Model Business Corporation Act (2016 Rev) art 7.32.

outline conditions for corporate dissolution, and regulate corporate operations to ensure compliance with public policy.<sup>20</sup>

In sum, these reasons amply justify the focus of this thesis to shareholders' agreements.

## **ii. The jurisdictions within the purview of the thesis**

This thesis aims to explore the importance of shareholders' agreements from both practical and academic perspectives. Shareholders possess the authority to cast votes on significant issues concerning the company, thereby granting them a degree of influence over the corporation's operations.<sup>21</sup> Shareholders possess two primary rights: the ability to elect directors and the authority to sell shares. While other rights may also hold significance and value, these two rights are inherently fundamental to the role of shareholders.<sup>22</sup> However, Azerbaijan currently lacks a specific legal framework, judicial precedents and empirical case studies on governing such agreements. Therefore, I will posit the law and practice of the U.S on shareholders' agreement as the model for this thesis to assess its potential for implementation and enforcement within the Azerbaijani context.

The U.S boasts a robust business ecosystem and serves as a significant hub for diverse industries, supported by a well-established legal framework and relevant court rulings. In terms of practical implications, I contend that research in this domain can yield critical insights into the operation of these agreements and legal practitioners in Azerbaijan can utilize these findings to better understand the application of shareholders' agreements and to pinpoint the obstacles related to their enforcement.

---

<sup>20</sup> Model Business Corporation Act (2016 Rev) art 7.32.

<sup>21</sup> Julian Velasco, 'The Fundamental Rights of the Shareholder' (2006) 40 UC Davis Law Review 407, 327.

<sup>22</sup> *ibid* 416.

In my view, the corporate laws, and the shareholders' agreements related practices, in the various States in the U.S could serve as an exemplary framework for the interests of shareholders and numerous of its elements could potentially serve as a model or sources of inspirations for Azerbaijan's legal structure. Consequently, I plan to analyze U.S legislation to identify relevant provisions that could be effectively adapted for implementation in Azerbaijan.

### **iii. Research and methodology issues**

In terms of academic relevance, it is important to highlight the scarcity of publications and studies focused on shareholders' agreements in Azerbaijan. This includes also the dearth of suitable resources and materials in the Azerbaijani language. The overwhelming part of the available literature, moreover, is in Russian language, which equally fails to adequately address the topic of shareholders' agreements, among others. This is so because company law is largely in the process of development in Russia as well and most of the Russian language pertaining publications are based and refer predominantly to Russian law. Therefore, I believe that this thesis will provide valuable insights for Azerbaijani researchers interested in exploring shareholders' agreements and their practical implications. I argue that the core problem concerning the limited availability of academic resources and research originates from the remnants of business practices established during the Soviet era. Many countries, including Azerbaijan, face analogous difficulties. The extent to which all societal components and their institutions participate in the functioning of a completely state-controlled and orchestrated economy serves as clear evidence of this phenomenon.<sup>23</sup> "Osakwe identifies key characteristics of socialist law, including the prioritization of national economic planning as the fundamental

---

<sup>23</sup> John Quigley, 'Socialist Law and the Civil Law Tradition' (1989) 37 American Journal of Comparative Law 781, 786.

element of economic advancement, a reluctant acceptance of private ownership, and a doctrinal dismissal of the Romanist classification of law into public and private domains.”<sup>24</sup> During the Soviet period characterized by central planning, business transactions were centrally decided upon, with the government acting as the sole authority in economic affairs. As a result, corporate governance did not become a significant area of academic exploration.

This situation not only impacted the Soviet republics but also affected nations that experienced strict Soviet control. A relevant example can be seen in Hungary, Poland or the Czech Republic which, like the Soviet Union, did not function as a capitalist economy, with government oversight prevailing in the business sector. “However, following the collapse of the Soviet Union and the subsequent independence of these nations, virtually all Central and Eastern European, as well as Central Asian post-socialist countries began to transition towards a capitalist economic model replacing centrally governed with market economies. In socialist economies, where legal and economic professionals primarily focus on agreements between state-owned enterprises, the most significant remedy for contract violations tends to be the imposition of penalties.”<sup>25</sup>

Despite the relatively small but growing number of instances and the limited availability of recent academic literature containing empirical data on shareholders' agreements, there is adequate evidence to assert that these agreements hold significant relevance, for example, in Hungary today.<sup>26</sup> This development, however, did not stem from prescriptive corporate legislation: rather, it emerged organically and drew inspiration from more advanced Western legal systems, particularly since, during the socialist era, neither shares as investment

---

<sup>24</sup> John Quigley, ‘Socialist Law and the Civil Law Tradition’ (1989) 37 *American Journal of Comparative Law* 781, 787.

<sup>25</sup> Rudolf B. Schlesinger, Hans W. Baade, Mirjan R. Damaška, and Peter E. Herzog, *Comparative Law: Cases, Text, Materials* (5th edn, Foundation Press 1988) 157.

<sup>26</sup> Tibor Tajti, Hungary, in *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (Sebastian Mock, Kristian Csach & Bohumil Havel eds., De Gruyter 2018), p. 336.

instruments nor the associated legal frameworks were present.<sup>27</sup> The shift towards a market economy and capitalism in the 1990s reinstated the importance of shareholders' agreements.<sup>28</sup> “It is noteworthy that the only comprehensive monograph dedicated to this specific type of agreement, published in 1996, emphasized that “despite the brief history of shareholders' agreements, it is utilized by a wide array of businesses in Hungary.”<sup>29</sup>

Azerbaijan shares a similar trajectory with Hungary as a post-socialist nation, where there is a notable absence of literature addressing business governance, particularly concerning shareholders' agreements. The country is striving to establish a new business model that prioritizes governance by business entities themselves rather than through government interventions.

Investigating shareholders' agreements, its operational mechanisms, and the associated challenges is crucial for the vitality of business entities. This examination significantly influences the national economy, as the performance and success of these entities are directly linked to economic health.

Finally, this research holds significant value for Azerbaijani academics as well, given the limited resources and studies available on shareholder agreements. This thesis can serve as a foundational work, enabling scholars to grasp the fundamental mechanisms involved and expand the scope of their investigations.

#### **iv. Roadmap to the thesis**

This thesis seeks to adopt a holistic methodology that involves an in-depth analysis of the legal framework in the U.S, particularly focusing on the Model Business Corporation Act and the

---

<sup>27</sup> Tibor Tajti, Hungary, in *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (Sebastian Mock, Kristian Csach & Bohumil Havel eds., De Gruyter 2018), p. 336.

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

Delaware General Corporation Law. The research aims to scrutinize the provisions within these laws and assess the effectiveness of various shareholders' agreements.

In addition, it will investigate the legal landscape of Azerbaijan, concentrating on the Azerbaijan Civil Code to uncover relevant clauses related to shareholders' agreements, while also identifying potential gaps and weaknesses that could hinder their application and enforcement. Moreover, the study will evaluate how the principles outlined in the Model Business Corporation Act and Delaware General Corporation Law could benefit Azerbaijan's legal system, identifying specific provisions that could be effectively integrated and utilized.

This thesis goes beyond a mere comparison of the legal systems in the two jurisdictions; it also examines the practical implications and outcomes of shareholder agreement. As a result, the analysis will include case studies from the U.S, emphasizing the reasoning, arguments, and rulings involved, thus providing tangible examples of how legal professionals can effectively leverage these agreements. The research will also address the challenges and inaccuracies related to the implementation of shareholders' agreements, underscoring the difficulties in articulating cases and how inadequately drafted clauses can obstruct legal practitioners in their enforcement endeavors.

The thesis is organized into multiple chapters. The first chapter highlights the importance of a holistic approach, which includes an in-depth analysis of the legal framework, a comprehensive overview of Azerbaijan's legal system, and the identification of deficiencies in the nation's legal provisions concerning shareholders' agreements. The following chapter focuses on the legal framework in the United States, particularly examining the Model Corporation Business Act (2016 Revision) and the Delaware General Corporation Law, aiming to uncover how these regulations govern shareholders' agreements and to assess which elements might be suitable for adaptation within Azerbaijan's legal environment. The final chapter evaluates relevant case law, legal reviews, and casebooks to examine the implementation and enforcement of shareholders'

agreements, offering valuable guidance for Azerbaijani lawyers on effectively leveraging these legal frameworks. The conclusion will encapsulate the main arguments of the thesis and provide an overview of its findings. It will highlight that Azerbaijan currently lacks adequate legislation, propose that the U.S could serve as a model for reform, and suggest that specific case studies may offer pathways for the effective implementation of shareholders' agreements.

## Chapter 1: The legal framework of Azerbaijan

### 1.1. General overview of shareholders' agreements in Azerbaijan

Regarding the legal characteristics of the Shareholders' Agreement (SA), it is typically defined as a contract, either written or verbal, established between parties, with at least one being a shareholder.<sup>30</sup> This contract pertains to matters related to the company, its shares, or the relationships among shareholders. Consequently, the SA is generally viewed as an unconventional, consensual, and reciprocal agreement, governed by the principles of general obligations law for its interpretation.<sup>31</sup>

A shareholders' agreements offers numerous benefits to shareholders, highlighting the advantageous nature of such agreements.<sup>32</sup> In shareholder companies, a shareholders' agreements can effectively address corporate conflicts and manage the dynamics between minority and majority shareholders. Although current laws do not explicitly allow for such agreements, they also do not prohibit them either, leading to challenges for local firms seeking to establish these contracts.<sup>33</sup> As the trend of forming shareholders' agreements grows, there is an increasing need for their formal recognition in Azerbaijan. The absence of legal guidelines creates uncertainty regarding the compatibility of these agreements with the Civil Code and other regulations.<sup>34</sup> Additionally, the lack of judicial precedents complicates predictions about court interpretations. Shareholders' agreements empowers shareholders in company management, allowing them to define their relationships more comprehensively, which aligns

---

<sup>30</sup> Maja B Filipović, 'How Can Shareholders' Agreements Shape Corporate Governance and Directors' Liability?' (2023) 9(2) *InterEULawEast Journal of International and European Law, Economics and Market Integrations* 193, 199.

<sup>31</sup> *ibid.*

<sup>32</sup> Emin Karimov, 'Shareholders' Agreement in Azerbaijani Law' (2012) 1 *Baku Law Journal* 12.

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

with market economy principles.<sup>35</sup> These agreements often address share transfer restrictions and conditions for share repurchase, safeguarding minority shareholders' rights. For instance, they may stipulate that minority shares must be sold at the same price if majority shareholders sell theirs. Moreover, they can include clauses that limit third-party access to shareholding, thereby protecting the interests of existing shareholders.<sup>36</sup> Albeit company law is enshrined into the Azerbaijani Civil Code, it does not explicitly reference shareholders' agreements. It, however, imposes no prohibitions against them either. Understandably it requires the passage of a company charter, or articles of incorporation in U.S terminology.<sup>37</sup> Thus, according to Article 45.2, "When a legal entity is formed by several founders, they must create an agreement that outlines the entity's charter, the process for collaborative activities related to its formation, the conditions for transferring their assets to the entity, and their involvement in its operations."<sup>38</sup>

This provision suggests that shareholders can define their roles within the company's operations. While it does not explicitly grant individual shareholders the authority to intervene in company matters, their shareholders' agreements may allow them to exert some influence over the company's activities. Thus, it is evident that there are no limitations on the creation and execution of shareholders' agreement.

Azerbaijan's Civil Code, specifically Article 98.9, outlines the process for establishing a joint-stock company, which necessitates convening a founding meeting and entering into an agreement as stipulated in Article 45.2 of the Code, or making a decision to form the company if it is initiated by a sole individual.<sup>39</sup> This process also involves the allocation of shares among the founders and the creation of the company's charter.<sup>40</sup> While the term "agreement" is

---

<sup>35</sup> Emin Karimov, 'Shareholders' Agreement in Azerbaijani Law' (2012) 1 Baku Law Journal 12.

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

<sup>38</sup> Civil Code of the Republic of Azerbaijan (28 december 1999), art 45.2.

<sup>39</sup> Civil Code of the Republic of Azerbaijan (28 december 1999), arts 45.2 and 98.9.

<sup>40</sup> *ibid.*

referenced in this article, it does not specify the nature of the agreement. However, it can be inferred that this agreement pertains to the shareholders, suggesting that it is indeed a shareholders' agreements.<sup>41</sup> Furthermore, Article 98.9 makes a connection to Article 45.2, which elaborates on the role of shareholders in the company's operations.<sup>42</sup>

In accordance with Article 5.4.1 of the Law of the Republic of Azerbaijan regarding State Registration and the State Register of Legal Entities, the foundational documents for an entity seeking legal entity status must be presented by the founder(s) or their appointed representatives. For public legal entities, the charter must receive approval as stipulated by the Law of the Republic of Azerbaijan On Public Legal Entities.<sup>43</sup> Although the document does not explicitly mention shareholders' agreements, it implies that shareholders have the option to include any relevant documents they deem necessary during the application process for the new company.<sup>44</sup> It is accurate to assert that a shareholders' agreements is not required for the establishment of a company, as it remains confidential and is not subject to public scrutiny.<sup>45</sup> However, if shareholders believe it is appropriate to submit a shareholders' agreement, the article imposes no restrictions on doing so.<sup>46</sup>

“According to Article 390.1 of the Azerbaijan Civil Code, both individuals and legal entities possess the autonomy to engage in contractual agreements and define their terms. In other words, this Article makes the freedom of contract principal part of the legal system of Azerbaijan. They are also permitted to conclude contracts that are not explicitly mentioned in this Code, if these agreements do not conflict with its provisions.”<sup>47</sup>

---

<sup>41</sup> Civil Code of the Republic of Azerbaijan (28 december 1999), arts 45.2 and 98.9.

<sup>42</sup> *ibid.*

<sup>43</sup> Law of the Republic of Azerbaijan on State Registration and the State Register of Legal Entities, No 560-IIQ (12 december 2003), art 5.4.1.

<sup>44</sup> *ibid.*

<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*

<sup>47</sup> Civil Code of the Republic of Azerbaijan (28 december 1999), art 390.1.

This article indicates that shareholders have the liberty to formulate and execute contracts according to their preferences, provided there is mutual agreement. Consequently, this flexibility serves as a valuable mechanism for the establishment of shareholders' agreements, facilitating the creation of contracts that align with the desires of the shareholders. Since the Civil Code does not impose restrictions on the formulation of such agreements, it effectively authorizes their development.

## **1.2. Gaps in Azerbaijan's legal framework on shareholders' agreements and possible solutions**

As showed, although the principle of freedom of contract is part of the legal system of Azerbaijan, the current application of the related issues is deemed problematic within the framework of Azerbaijani law.<sup>48</sup> As previously mentioned, any agreement that limits the ability of shareholders to manage shares may be at odds with existing legal statutes.<sup>49</sup> Additionally, arrangements concerning the establishment of management bodies could be subject to dispute if they are inconsistent with corporate regulations.<sup>50</sup> Provisions in company charters or shareholders' agreements that regulate the allocation of income—such as preferential or varying dividend distributions—may be subject to invalidation if they conflict with mandatory norms under Azerbaijani corporate law, potentially complicating the enforcement of shareholders' contractual entitlements.<sup>51</sup>

Current legal frameworks do not allow for the imposition of limitations on the rights to sell shares.<sup>52</sup> Furthermore, under Article 44.3 of the Civil Code, such limitations could be

---

<sup>48</sup> Emin Karimov, 'Shareholders' Agreement in Azerbaijani Law' (2012) 1 Baku Law Journal 12.

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

<sup>51</sup> *ibid.*

<sup>52</sup> *ibid.*

interpreted as an infringement on the legal capacity and abilities of individual shareholders.<sup>53</sup> Consequently, any contractual clause that seeks to restrict specific shareholder rights is rendered void and lacks legal standing.<sup>54</sup> This principle similarly applies to shareholders that are corporate entities, although the limitation of a corporate entity's capacity is viewed as a contentious matter rather than outright invalid. Regardless, any agreement that seeks to limit the buying and selling of shares contravenes Article 99.1 of the Civil Code<sup>55</sup> and may be contested as it undermines the legally protected rights to freely use, own, and dispose of property.<sup>56</sup> “Additionally, some legal scholars argue that if a restriction on the transfer of shares is breached, an interested party could contest the transaction by invoking Article 350 of the Civil Code, provided they can demonstrate that the opposing party was previously aware of the restriction.”<sup>57</sup> However, since parties often choose to keep the specifics of shareholders’ agreement confidential, the chances of the other party being informed about such restrictive clauses are minimal.<sup>58</sup>

Consequently, if a disagreement arises, a court may rule a shareholders’ agreements invalid if it fails to adhere to relevant legal statutes.<sup>59</sup> A review of the legal framework reveals that, due to the significant likelihood of being unable to guarantee the obligatory execution of such agreements, forming such a contract under Azerbaijani law proves to be largely futile for the time being.<sup>60</sup>

---

<sup>53</sup> Emin Karimov, ‘Shareholders’ Agreement in Azerbaijani Law’ (2012) 1 *Baku Law Journal* 12.

<sup>54</sup> *ibid* 10.

<sup>55</sup> According to Article 99.1 of the Civil Code of the Republic of Azerbaijan: “A joint stock company, whose participants may dispose of their shares without the consent of other shareholders is deemed an open joint stock company. Such joint stock company shall have the right to hold open subscription to shares it is issuing and their free unlimited sale [sale without limitation].” Civil Code of the Republic of Azerbaijan, art 99.1 <https://justice.gov.az/senedler/46?culture=en> accessed 12 June 2025.

<sup>56</sup> Emin Karimov, ‘Shareholders’ Agreement in Azerbaijani Law’ (2012) 1 *Baku Law Journal* 10.

<sup>57</sup> *ibid*.

<sup>58</sup> *ibid*.

<sup>59</sup> *ibid*.

<sup>60</sup> *ibid*.

“To begin with, it is essential to revise Chapter 4 of the Civil Code to facilitate the establishment of shareholders’ agreements in Azerbaijan and to acknowledge contracts formed in foreign jurisdictions.”<sup>61</sup> Shareholders must be empowered to define and negotiate the authority of the general meeting through contractual provisions.<sup>62</sup> It is important to create avenues for outlining rights and responsibilities, such as mandating one shareholder to endorse the candidates put forth by another shareholder for the company’s management positions.<sup>63</sup> Furthermore, the rights and responsibilities of the involved parties concerning the (mandatory) buying and selling of shares should be clearly defined when the conditions outlined in the agreement are met.<sup>64</sup>

---

<sup>61</sup> Emin Karimov, ‘Shareholders’ Agreement in Azerbaijani Law’ (2012) 1 *Baku Law Journal* 10.

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*

<sup>64</sup> *ibid.*

## Chapter 2 – The Legal Framework of United States

### 2.1. General overview of shareholders' agreements law in United States

Shareholders' agreements is often created alongside the corporate charter, which serves as the foundational governance document. Amending the charter is inherently challenging, requiring both directors and shareholders to agree, unlike typical corporate decisions.<sup>65</sup> In many states, including Delaware, a shareholders' agreement related to director control must be part of the charter.<sup>66</sup> Courts treat these agreements as contracts, enforcing them according to the parties' intentions, provided they comply with legal standards and do not harm other shareholders.<sup>67</sup> Such agreements can exist independently or be integrated into the charter or bylaws, where they can be amended as specified. Since these agreements often aim to bypass standard corporate procedures like majority rule, it is reasonable to expect that any intended deviations are clearly articulated.<sup>68</sup>

Distinct articles exist that govern shareholders' agreements. Most U.S. states have adopted provisions in corporation codes that address the main types of shareholders' agreements.<sup>69</sup> The main categories of shareholders' agreements encompass vote pooling arrangements, irrevocable proxies, voting trusts, and agreements among shareholders.<sup>70</sup>

---

<sup>65</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 660.

<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.* 646.

<sup>70</sup> *ibid.*

A shareholders' agreements usually provides additional rights to the shareholders involved in the agreement, which extend beyond the standard rights associated with their share ownership.<sup>71</sup>

This arrangement aims to guarantee that these shareholders receive the advantages of the extra rights they negotiated when they invested.<sup>72</sup> For instance, such agreements may empower specific shareholders to appoint members to the company's board of directors, confer unique voting privileges to certain shareholders, ensure that particular shareholders possess preemptive rights in the event of new equity securities being issued, and/or establish rights that regulate or allow participation in the transfer of shares among other shareholders, among other provisions.<sup>73</sup>

Shareholders' agreement are typically allowed within corporate governance in the U.S.<sup>74</sup> Common elements found in these agreements include stipulations regarding the compensation of executives, mandates for arbitration in the event of conflicts, appointment of the corporation's directors and officers, specifications for dividend distributions, and rules concerning the transfer of shares.<sup>75</sup> "Certain stipulations, including the identification of corporate officers, their remuneration, and various financial matters, fall within the directors' legal mandate to "oversee the business and affairs" of the corporation. These stipulations risk being deemed invalid as they may infringe upon the directors' statutory powers."<sup>76</sup> Judicial bodies present a range of justifications for invalidating provisions in shareholders' agreements that restrict the authority of the board. However, a common concern among these courts is that such agreements

---

<sup>71</sup> Corporation Law Committee of the Association of the Bar of the City of New York, 'The Enforceability and Effectiveness of Typical Shareholders' Agreement Provisions' (2010) 65 *Bus Law* 1155.

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

<sup>74</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 646.

<sup>75</sup> *ibid.*

<sup>76</sup> *ibid.*

effectively "handcuff the directors," thereby hindering their ability to exercise discretion on issues addressed within the agreement.<sup>77</sup>

"Legislation that governs various forms of shareholders' agreements occasionally stipulates the maximum duration allowed for such agreements. According to Section 7.32, the upper limit is set at 10 years, although it allows the involved parties to designate an alternative duration."<sup>78</sup>

"Typically, voting trust agreements are established for a 10-year term, with many including provisions for renewal, effectively extending the agreement's duration to 20 years."<sup>79</sup> It is important to note that the duration restrictions outlined in voting trust would statutes do not extend to other categories of shareholders' agreements.<sup>80</sup> Furthermore, numerous court rulings have upheld shareholders' agreements intended to remain valid indefinitely.<sup>81</sup>

In Delaware, shareholders can utilize voting trusts and various voting arrangements to delegate their voting rights for a period defined in the agreement. Conversely, proxy agreements are limited to a maximum duration of three years, unless a longer period is explicitly specified in the proxy.<sup>82</sup>

"DGCL 350 specifically governs agreements among close corporations to limit the authority of the company's directors. Both courts and scholars recognize a notable distinction between the shareholders of public corporations and those of close corporations, particularly concerning their bargaining power. This distinction suggests that shareholders in close corporations should enjoy increased latitude to manage their affairs according to their preferences. Furthermore, any

---

<sup>77</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 646.

<sup>78</sup> *ibid* 647-648.

<sup>79</sup> *ibid*.

<sup>80</sup> *ibid*.

<sup>81</sup> *ibid*.

<sup>82</sup> *ibid*.

shareholders' agreements permitted under MBCA 7.32 become invalid if the corporation transitions into a public entity.”<sup>83</sup>

“Voting rights can be established through various agreements, including voting trusts, pooling agreements, and proxy agreements. According to Delaware law, these agreements are regulated by DGCL § 212 and 218.”<sup>84</sup> A voting trust is created when an individual assigns their stock and corresponding voting rights to a trustee. In contrast, pooling agreements do not necessitate the transfer of rights to a trustee; instead, participants commit to voting their shares in accordance with the terms outlined in their agreement.<sup>85</sup> “Proxy agreements enable shareholders to delegate their voting rights to another individual, adhering to the procedural stipulations set forth in DGCL § 212. Furthermore, the Model Business Corporation Act (MBCA) sections 7.30 and 7.31 oversee voting trusts and voting agreements, respectively, while MBCA 7.32 addresses shareholders’ agreements that dictate the exercise or distribution of voting rights.”<sup>86</sup>

Voting mechanisms can manifest in several ways, such as through voting trusts, voting agreements, or pooling arrangements, as well as through irrevocable proxies.<sup>87</sup> For instance, a shareholders' agreement might stipulate that the actions taken by the board and shareholders require the consent of a designated managing shareholder to be valid.<sup>88</sup> These voting mechanisms serve as a strategy for distributing control within the corporation. For example, different groups of shareholders might be granted the authority to elect directors by creating distinct classes of stock.<sup>89</sup> It is important to note that voting arrangements do not operate

---

<sup>83</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 648.

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.* 652.

<sup>88</sup> *ibid.*

<sup>89</sup> *ibid.*

automatically; their mere presence does not eliminate the necessity for adhering to the legal procedures associated with director and shareholder actions.<sup>90</sup>

“Numerous state laws facilitate the enforcement of shareholders' agreements, including the Model Business Corporation Act (MBCA), which clearly indicates that voting agreements are enforceable by law.”<sup>91</sup> Generally, courts possess the authority to enforce any substantive provisions within a shareholders' agreements, which may necessitate the buyout of a shareholder or the initiation of mandatory arbitration.<sup>92</sup> Additionally, under the MBCA, a buyer of shares who was unaware of a shareholders' agreements at the time of acquisition may also seek rescission.<sup>93</sup>

Shareholders' agreements typically encompass a range of issues beyond just buy-sell clauses. These issues may include shareholder loans, the processes for making and utilizing capital contributions, compensation for shareholder employment, and governance of corporate operations.<sup>94</sup> For instance, minority shareholders might condition their capital contributions on receiving veto rights over significant corporate actions, such as asset sales, mergers, liquidations, or shareholder distributions. This often involves stipulating that such decisions require the consent of shareholders who collectively own a substantial majority of the shares.<sup>95</sup> The unique requirements of closely held corporations are evident in judicial rulings that have acknowledged a heightened fiduciary responsibility among stakeholders in these entities.<sup>96</sup> Courts have determined that majority shareholders owe a fiduciary obligation not only to the corporation itself but also to the minority shareholders collectively.<sup>97</sup>

---

<sup>90</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 652.

<sup>91</sup> *ibid* 653-654.

<sup>92</sup> *ibid*.

<sup>93</sup> *ibid*.

<sup>94</sup> *ibid* 654.

<sup>95</sup> *ibid*.

<sup>96</sup> *ibid*.

<sup>97</sup> *ibid*.

Minority shareholders may pursue tag-along rights to safeguard their interests if majority shareholders opt to divest their stakes. “Tag-along rights enable minority shareholders to sell their shares under the same conditions and price as those offered to majority shareholders.”<sup>98</sup> Conversely, drag-along rights serve to protect majority shareholders intending to sell by mandating that all other shareholders also participate in the sale. These drag-along rights enhance the likelihood of majority shareholders obtaining full value for their shares, as the necessity to negotiate with remaining minority shareholders could deter potential buyers from offering a competitive price for the majority stake.<sup>99</sup> “Given that these rights regulate the transfer of ownership stakes, incorporating tag-along and drag-along provisions within buy-sell agreements is a prudent approach.”<sup>100</sup>

## **2.2. Model Corporation Business Act and Delaware General Corporation Law**

### **2.2.1. Model Corporation Business Act (2016 Revision)**

The Model Act serves as the primary framework for state corporation laws.<sup>101</sup> A total of twenty-four states has either fully adopted or significantly incorporated the current Model Act into their corporate legislation, while seven jurisdictions continue to utilize the 1969 version of the Act. Notably, three of these seven jurisdictions are currently contemplating the transition to the updated version.<sup>102</sup>

---

<sup>98</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 657.

<sup>99</sup> *ibid.*

<sup>100</sup> *ibid.*

<sup>101</sup> Michael P Dooley and Michael D Goldman, 'Some Comparisons Between the Model Business Corporation Act and the Delaware General Corporation Law' (2001) 56 *Bus Law* 738.

<sup>102</sup> *ibid.*

The Model Act includes three specific provisions—sections 7.32, 14.30, and 14.34—that tackle the most prevalent issues faced by closely held companies without necessitating any special elections.<sup>103</sup> Section 7.32, in particular, allows shareholders of close corporations to enter into nearly any agreement that meets their needs, even if such agreements would typically conflict with other stipulations outlined in the Act.<sup>104</sup>

Following the enactment of Section 7.32 of the Model Business Corporation Act (MBCA) in 1991, a majority of states in the United States have permitted shareholders' agreements to enhance the legitimacy of such arrangements.<sup>105</sup> The Official Comment accompanying this section notes that prior to this, the Model Act had not explicitly endorsed shareholders' agreements, opting instead to move away from the inconsistent and sporadic legal developments seen in court cases. Section 732 thus departs from earlier judicial precedents.<sup>106</sup> In response to the introduction of Section 7.32 MBCA, numerous states, including Delaware, have revised their laws to clarify that corporate authority resides with the board of directors, while allowing deviations from this standard as outlined in the corporation's charter. US law generally does not impose restrictions on who can draft a corporate charter.<sup>107</sup>

While shareholders of any corporation can establish an agreement in accordance with the Model Business Corporation Act (MBCA) § 7.32, such an agreement becomes invalid once the corporation's stock is either listed on a national securities exchange or is actively traded in a market operated by one or more members of a national or affiliated securities association.<sup>108</sup>

Section 7.32 outlines several stipulations. The most critical requirement is that the agreement must receive unanimous consent from all shareholders; thus, arrangements that exclude certain

---

<sup>103</sup> Michael P Dooley and Michael D Goldman, 'Some Comparisons Between the Model Business Corporation Act and the Delaware General Corporation Law' (2001) 56 *Bus Law* 747.

<sup>104</sup> *ibid.*

<sup>105</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 645.

<sup>106</sup> *ibid* 646.

<sup>107</sup> *ibid.*

<sup>108</sup> *ibid* 650.

shareholders, such as those aimed at maintaining control within a specific group, must seek alternative means of authorization.<sup>109</sup> The agreement is required to be documented in writing; however, in contrast to some previous regulations, it is not necessary for this written agreement to be included in the articles of incorporation or bylaws—independent written agreements are explicitly permitted.<sup>110</sup> Additionally, this section imposes a default duration of ten years, akin to that of voting trusts, but unlike voting trusts, parties may extend this duration if they choose.<sup>111</sup> Lastly, the language of the Model Act mandates that a notice be included on the stock certificates to alert potential buyers about the existence of the agreement associated with the shares.<sup>112</sup>

The Official Commentary on the Model Business Corporation Act (MBCA) highlights the extensive applicability of the statute, stating, “Section 7.32(a) legitimizes nearly all forms of shareholders’ agreement that typically involve shareholders and their advisors.”<sup>113</sup> This provision ensures that any shareholders’ agreements adhering to this section remains valid, even if it conflicts with other provisions of the act.<sup>114</sup> Furthermore, it delineates seven key categories that appropriately belong within shareholders’ agreements: the elimination or limitation of board authority; the management of distributions; the appointment of directors or officers along with regulations concerning their roles; the allocation of voting rights among directors and shareholders or within either group; the governance of conflict transactions; the authorization of corporate power transfer to an individual for resolving deadlocks or in a broader context; and the stipulation for the corporation's dissolution.<sup>115</sup>

---

<sup>109</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 650.

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid.*

<sup>113</sup> *ibid.* 658.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

### 2.2.2. Delaware General Corporation Law

In the US, Delaware undoubtedly stands as the predominant source of corporate law in its broadest interpretation.<sup>116</sup> For an extended period, over half of the Fortune 500 companies and more than 45 percent of those listed on the New York Stock Exchange have selected Delaware as their state of incorporation.<sup>117</sup> The state possesses a significant edge in the realm of reincorporations, with over 82 percent of companies opting for Delaware when transitioning from their original state of incorporation.<sup>118</sup> The impact of Delaware's judiciary is profound and cannot be underestimated. Students studying corporate law primarily engage with rulings from the Delaware Court of Chancery and the Delaware Supreme Court, and this education significantly influences their professional practices after graduation.<sup>119</sup> In legal matters or conflicts involving companies incorporated in other jurisdictions, attorneys frequently reference Delaware case law for direction when there is a lack of binding precedent or applicable statutes in the state of incorporation.<sup>120</sup> Interestingly, the direct influence of the Delaware General Corporation Law (DGCL) appears less pronounced, as only the corporate statutes of Kansas, Oklahoma and Nevada exhibit a clear resemblance to the DGCL.<sup>121</sup> “Section 202 of DGCL broadly affirms the legitimacy of imposing restrictions on the transfer of shares, while section 218 explicitly acknowledges the legality of agreements concerning stockholder voting.”<sup>122</sup>

Although corporate codes are considered “enabling” statutes that offer adaptability for various business models, they do contain mandatory provisions that cannot be altered as well. For

---

<sup>116</sup> Dooley, Michael P., and Michael D. Goldman. 2001. “Some Comparisons Between the Model Business Corporation Act and the Delaware General Corporation Law.” *The Business Lawyer* 56 (2): pp. 737-738.

<sup>117</sup> *ibid.*

<sup>118</sup> *ibid.*

<sup>119</sup> *ibid.*

<sup>120</sup> *ibid.*

<sup>121</sup> *ibid.*

<sup>122</sup> *ibid.* 747.

instance, DGCL Section 102(a)(4) requires a description of the corporation's stock, except for non-stock corporations; however, it allows significant leeway regarding the types of classes, powers, preferences, rights, qualifications, limitations, or restrictions associated with the issued shares.<sup>123</sup>

Although the Delaware General Corporation Law (DGCL) does not explicitly enumerate the subjects that can be included in shareholders' agreements, Section 141 of the DGCL grants the board of directors comprehensive authority, with certain restrictions outlined in the corporate charter.<sup>124</sup> Shareholders' agreements frequently go beyond merely appointing directors or outlining the selection process; they can also dictate corporate policies typically reserved for the board's discretion. For instance, these agreements may appoint corporate officers, establish their compensation, and determine the conditions under which dividends will be issued.<sup>125</sup>

“Disagreements among shareholders can result in a deadlock, particularly when a corporation's board has an even number of directors and no shareholder or group can secure a majority to control it. Deadlocks may also occur if a minority shareholder has negotiated veto rights on key corporate decisions. Delaware law provides mechanisms to resolve such deadlocks.”<sup>126</sup> “If a shareholder requests it, the Court of Chancery can appoint a custodian (or receiver for insolvent corporations) when: (1) shareholders cannot elect directors due to division; (2) the corporation's operations are at risk because the board cannot reach decisions; or (3) the corporation has ceased operations and failed to take steps to dissolve or liquidate. A custodian has similar powers to a receiver but is primarily tasked with continuing the corporation's business rather than liquidating its assets.”<sup>127</sup>

---

<sup>123</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 646.

<sup>124</sup> *ibid.*

<sup>125</sup> *ibid* 659.

<sup>126</sup> Corporation Law Committee of the Association of the Bar of the City of New York, 'The Enforceability and Effectiveness of Typical Shareholders Agreement Provisions' (2010) 65(4) *Bus Law* 1189.

<sup>127</sup> *ibid.*

Preemptive rights allow shareholders to buy additional shares or equity securities that a corporation plans to issue.<sup>128</sup> Under Delaware law, these rights are not automatically granted; they must be specified in the corporation's certificate of incorporation.<sup>129</sup> However, corporations existing before July 3, 1967, retain preemptive rights for new share issues unless explicitly changed.<sup>130</sup> Delaware courts uphold preemptive rights outlined in shareholders' agreements, even if not in the incorporation documents.<sup>131</sup> The courts have clarified that while the common law presumption of preemptive rights has been removed, corporations and shareholders can still contractually agree on such rights for future share offerings.<sup>132</sup> Additionally, Delaware courts have affirmed directors' authority to issue shares with preemptive rights, even when the incorporation documents deny common law rights. Certain transaction categories exempt from preemptive rights have emerged in Delaware case law.<sup>133</sup>

---

<sup>128</sup> Corporation Law Committee of the Association of the Bar of the City of New York, 'The Enforceability and Effectiveness of Typical Shareholders Agreement Provisions' (2010) 65(4) *Bus Law* 1191-1192.

<sup>129</sup> *ibid.*

<sup>130</sup> *ibid.*

<sup>131</sup> *ibid.*

<sup>132</sup> *ibid.*

<sup>133</sup> *ibid.*

## Chapter 3 – The Case Law of the United States

### 3.1. Significance of shareholders' agreements

Consensus among shareholders plays a vital role in privately owned firms, as it allows them to collaboratively formulate agreements that protect their individual interests. Numerous legal cases underscore the significance of these agreements in upholding the rights of shareholders. A notable example that illustrates the importance of a shareholders' agreements is the case of Donahue case.<sup>134</sup> In the this case, the absence of a shareholders' agreements compelled the court to depend on fiduciary duty principles to safeguard the interests of the minority shareholder.<sup>135</sup> This situation highlights the critical role that shareholders' agreements play in privately owned companies, as they help prevent inequitable treatment and mitigate legal ambiguities. Specifically, the lack of a shareholders' agreements in Donahue resulted in the absence of established rights, protections, and protocols for share transfers or buyouts.<sup>136</sup> Consequently, the minority shareholder, Donahue, found herself vulnerable to the majority's decisions, which included a selective stock repurchase that excluded her. This scenario revealed the inherent power disparities within closely held corporations.<sup>137</sup> The Donahue case emphasizes the necessity of implementing a formal shareholders' agreements to: delineate the rights and responsibilities of shareholders, create transparent and equitable processes for share transfers, buyouts, and redemptions, safeguard minority shareholders without relying on judicial intervention to enforce fiduciary duties, and enhance predictability while minimizing the risk

---

<sup>134</sup> Donahue v. Rodd Electrotpe Co. of New England, Inc., 367 Mass. 578 (1975).

<sup>135</sup> *ibid.*

<sup>136</sup> *ibid.*

<sup>137</sup> *ibid.*

of litigation.<sup>138</sup> In essence, had a shareholders' agreements existed in Donahue, the involved parties could have established contractual terms for any stock repurchase, leading the court to favor the enforcement of that agreement over the imposition of equitable principles.<sup>139</sup>

The absence of a clear shareholders' agreements adversely impacts shareholders, as even judicial systems struggle to offer sufficient safeguards in the absence of a formal written contract that explicitly outlines the rights, responsibilities, and protections—particularly for minority shareholders. A prominent example of this issue is illustrated in the case of *Ingle v. Glamore Motor Sales, Inc.*<sup>140</sup>

In this case, Ingle held a minority ownership interest and worked for Glamore Motor Sales, a privately owned corporation. He acquired a 25% share in the business and was employed under an at-will contract.<sup>141</sup> Following a conflict, the majority shareholders terminated his employment and sought to repurchase his shares in accordance with a shareholders' agreements that permitted such a buyback upon termination. Ingle initiated legal action, alleging that the majority shareholders engaged in oppressive behavior and violated their fiduciary duties.<sup>142</sup> The legal question at hand was whether the termination of Ingle's employment and the enforced repurchase of his shares constituted a breach of any fiduciary duty owed to him as a minority shareholder in a closely held corporation. The New York Court of Appeals ruled against Ingle, determining that the majority shareholders in a closely held corporation do not have a fiduciary obligation to minority shareholders regarding employment matters, particularly in cases of at-will employment.<sup>143</sup> The court found the share repurchase, as stipulated in the written agreement, to be valid and enforceable. New York law emphasizes contractual obligations and does not impose "partnership-like" fiduciary duties unless explicitly stated. The significance of

---

<sup>138</sup> *Donahue v. Rodd Electrotpe Co. of New England, Inc.*, 367 Mass. 578 (1975).

<sup>139</sup> *ibid.*

<sup>140</sup> *Ingle v. Glamore Motor Sales, Inc.*, 73 N.Y.2d 183, 535 N.E.2d 1311, 538 N.Y.S.2d 771 (1989).

<sup>141</sup> *ibid.*

<sup>142</sup> *ibid.*

<sup>143</sup> *ibid.*

this ruling lies in the strict enforcement of shareholders' agreements, as the court upheld the buyback clause, illustrating that well-defined contracts take precedence over equitable considerations.<sup>144</sup> Furthermore, unlike Massachusetts, where cases such as *Donahue and Wilkes* provide greater protections for minority shareholders, New York courts offer less safeguarding in the absence of clear agreements. This case highlights the essential need for careful negotiation and drafting of shareholders' agreements that explicitly outline rights, duties, and protections, particularly for minority stakeholders.<sup>145</sup> In jurisdictions like New York, courts prioritize contractual arrangements, indicating that minority shareholders should not depend on fiduciary protections but rather ensure their rights through explicit shareholders' agreements.<sup>146</sup> Shareholders' agreements is becoming increasingly prevalent in the business landscape as shareholders, particularly in privately held companies, seek to proactively address potential future challenges in corporate governance and to reinforce existing relationships among shareholders.<sup>147</sup> The inherent uncertainty in forecasting future events or circumstances creates a likelihood of conflicts; thus, shareholders' agreements often aim to mitigate these issues or establish a framework for resolving disputes.<sup>148</sup> However, it is important to acknowledge that conflicts may not be easily resolved, prompting parties to enter a subsequent phase focused on enforcing their rights as outlined in the agreement. This enforcement may occur in judicial settings or, more frequently, through commercial arbitration as stipulated by the shareholders.<sup>149</sup> Furthermore, disputes may extend beyond simple contractual disagreements within the shareholders' agreements, encompassing traditional remedies available under company law, such as claims of oppression, liquidation, or derivative actions. Even when

---

<sup>144</sup> *Ingle v. Glamore Motor Sales, Inc.*, 73 N.Y.2d 183, 535 N.E.2d 1311, 538 N.Y.S.2d 771 (1989).

<sup>145</sup> *ibid.*

<sup>146</sup> *ibid.*

<sup>147</sup> Michael J Duffy, 'Shareholders Agreements and Shareholders' Remedies – Contract Versus Statute?' (2008) 20(2) *Bond Law Review* art 1, 26–27.

<sup>148</sup> *ibid.*

<sup>149</sup> *ibid.*

parties confine their disputes to contractual matters, there remains a risk of litigation arising from pre-contractual misrepresentations or instances of misleading or deceptive conduct.<sup>150</sup>

### 3.2. Enforcement of shareholders' agreements

Shareholders' agreements is legally enforceable, similar to other contracts, but their remedies differ from typical contract cases.<sup>151</sup> These disputes often lead to specific performance instead of monetary damages, as damages can be too uncertain.<sup>152</sup> Possible remedies include nullifying corporate actions that breach the agreement, modifying the agreement or corporate documents, transferring shares, establishing a constructive trust on misappropriated assets, ordering an accounting, and awarding both compensatory and punitive damages. Courts can enforce the substantive terms of these agreements.<sup>153</sup> In the case of *Ramos v. Estrada*, a California court mandated the buyout of a shareholder who violated the agreement, which required members to vote collectively. When one member deviated, the group replaced him as a director, and the court deemed this action a breach, triggering the buy/sell provisions.<sup>154</sup>

While the principle of "freedom of contract" underpins many clauses found in a typical shareholders' agreements, various legal factors will influence their enforceability and overall effectiveness.<sup>155</sup>

---

<sup>150</sup> Michael J Duffy, 'Shareholders Agreements and Shareholders' Remedies – Contract Versus Statute?' (2008) 20(2) *Bond Law Review* art 1, 26–27.

<sup>151</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 664.

<sup>152</sup> *ibid.*

<sup>153</sup> *ibid.*

<sup>154</sup> *ibid.*

<sup>155</sup> Corporation Law Committee of the Association of the Bar of the City of New York, 'The Enforceability and Effectiveness of Typical Shareholders Agreement Provisions' (2010) 65(4) *The Business Lawyer* 1155

Shareholders typically enforce their claims through derivative actions, representing the corporation in lawsuits when it has been harmed.<sup>156</sup> Although individuals can sue based on shareholders' agreements for breaches by other parties, enforcement often involves costly litigation. When the corporation suffers, it holds the claim, but directors may hesitate to act, particularly if they are at fault.<sup>157</sup> In derivative actions, shareholders act on behalf of the corporation, which is the true-injured party, and cannot pursue claims for personal losses even if their stock value declines.<sup>158</sup> Many state laws, including the MBCA, allow for the enforcement of shareholders' agreements, enabling courts to mandate specific terms such as buyouts or arbitration. "Buyout is the purchase of a person's ownership interest, especially a shareholder's interest in a corporation, often by the other shareholders or by the corporation itself. Also, the acquisition of a company's controlling interest, typically by another company or a private equity firm."<sup>159</sup> Additionally, under the MBCA, a buyer unaware of a shareholders' agreements at the time of purchase may seek rescission.<sup>160</sup>

Recent court rulings have affirmed the enforceability of shareholders' voting agreements through injunctions or specific performance, moving away from earlier skepticism towards such agreements.<sup>161</sup> Traditional remedies like damage suits often fall short in addressing breaches of these agreements, leading courts to effectively invalidate them when specific enforcement is denied.<sup>162</sup>

---

<sup>156</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 665.

<sup>157</sup> *ibid.*

<sup>158</sup> *ibid.*

<sup>159</sup> Black's Law Dictionary (11th edn, Thomson Reuters 2019) sub verbo 'buyout'.

<sup>160</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 665.

<sup>161</sup> *ibid.*

<sup>162</sup> *ibid* 665-666.

Shareholders' agreements can also outline methods for resolving disputes, including arbitration or specific remedies like buyouts.<sup>163</sup> It's common for these agreements to include provisions for arbitration, and pooling agreements may stipulate that shareholders follow an arbitrator's decision in case of voting disagreements. Additionally, some agreements may delegate management decisions to arbitrators.<sup>164</sup>

Most state laws require a certain percentage of shareholder approval for mergers and consolidations. However, investors typically do not want to engage in lawsuits, regardless of potential recovery.<sup>165</sup> Legal remedies often fall short, so the best way to protect clients entering corporate ventures is through a well-structured shareholders' agreements that balances interests fairly.<sup>166</sup> While this does not completely eliminate the risk of litigation—often arising from disputes over the agreement's terms—such cases are relatively few. Most disputes involve attempts by shareholders to challenge the agreement's validity, often citing violations of the Business Corporation Act or public policy.<sup>167</sup>

The case of *Galler v. Galler* represents an important ruling in corporate law by the Illinois Supreme Court, focusing on the validity of shareholders' agreements within closely held corporations.<sup>168</sup> The dispute involved two brothers, Benjamin and Isadore Galler, who were the sole shareholders of Galler Drug Company. In 1955, they established a shareholders' agreements stipulating that upon the death of one brother, the surviving brother or his estate would provide the deceased brother's widow with a set amount of dividends for a decade, maintain a certain stock ownership ratio, and continue the company's operations as outlined.<sup>169</sup>

---

<sup>163</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 665-666.

<sup>164</sup> *ibid.*

<sup>165</sup> Alex Elson, 'Shareholders Agreements, A Shield for Minority Shareholders of Close Corporations' (1967) 22(2) *The Business Lawyer* 451.

<sup>166</sup> *ibid.*

<sup>167</sup> *ibid.*

<sup>168</sup> *Galler v. Galler*, 32 *N.Y.2d* 16 (1973).

<sup>169</sup> *ibid.*

After Isadore's death in 1957, his widow, Sarah Galler, attempted to enforce this agreement, but Benjamin and other family members contested its validity, claiming it breached corporate governance standards.<sup>170</sup> The key questions were whether the shareholders' agreements was legitimate and enforceable, if it unduly limited the authority of corporate directors, and whether it was contrary to public policy or corporate law.<sup>171</sup> The Illinois Supreme Court ultimately affirmed the agreement's enforceability, siding with Sarah Galler. The court acknowledged that closely held corporations operate differently from publicly traded ones, asserting that shareholders' agreements that dictate management and financial matters are typically valid, provided they do not adversely affect creditors or contravene public policy.<sup>172</sup> The agreement was deemed compliant with corporate law as it was established in good faith and did not harm the interests of third parties, allowing for more governance flexibility in close corporations compared to larger entities.<sup>173</sup>

In the landmark case of *Galler v. Galler*, the court was the first to recognize the distinct features of closely held corporations when assessing the legitimacy of a shareholders' agreements. By affirming the agreement, the *Galler* court emphasized the critical role that such agreements play within closely held corporations.<sup>174</sup> Minority shareholders in these entities often invest significant time and resources, yet they face challenges in liquidating their shares due to the lack of a robust market for them. The *Galler* court regarded the shareholders' agreements as a valuable instrument for managing relationships in closely held corporations, rather than viewing it with skepticism or disfavor.<sup>175</sup>

---

<sup>170</sup> *Galler v. Galler*, 32 N.Y.2d 16 (1973).

<sup>171</sup> *ibid.*

<sup>172</sup> *ibid.*

<sup>173</sup> *ibid.*

<sup>174</sup> Wulf A Kaal, 'United States of America' in Sebastian Mock, Kristian Csach and Bohumil Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis* (De Gruyter 2018) 651.

<sup>175</sup> *ibid.*

The case of *Zion v Kurtz* involved a dispute among shareholders of a closely held corporation and centered on the enforceability of a shareholders' agreements that included a provision contrary to the certificate of incorporation.<sup>176</sup> The plaintiff, Zion, a minority shareholder, initiated legal action against Kurtz, the majority shareholder, claiming that Kurtz did not comply with a shareholders' agreements that mandated unanimous approval for specific corporate decisions.<sup>177</sup> Although the corporation was registered in Delaware, where corporate law does not strictly enforce such agreements unless included in the corporate charter or bylaws, Zion contended that New York law should govern the situation due to the corporation's primary operations being based in New York.<sup>178</sup> The key questions were whether the shareholders' agreements was valid despite not being part of the corporate charter or bylaws, and whether New York or Delaware law should apply.<sup>179</sup> The New York Court of Appeals ruled in favor of Zion, determining that the shareholders' agreements was indeed enforceable, even though the corporation was incorporated in Delaware. The court justified its decision by stating that New York law was applicable since the corporation primarily operated in New York, and the agreement represented the parties' intentions.<sup>180</sup> The court highlighted the distinct nature of closely held corporations compared to publicly traded ones, asserting that shareholders' agreements should be respected when they align with the parties' expectations.<sup>181</sup> While Delaware law necessitated that such agreements be included in the corporate charter or bylaws for enforceability, the court recognized that New York law offered more leniency in acknowledging shareholders' agreements.<sup>182</sup> This ruling underscored the significance of upholding private shareholders' agreements, particularly in closely held corporations.<sup>183</sup> The

---

<sup>176</sup> *Zion v. Kurtz*, 50 N.Y.2d 92 (1980).

<sup>177</sup> *ibid.*

<sup>178</sup> *ibid.*

<sup>179</sup> *ibid.*

<sup>180</sup> *ibid.*

<sup>181</sup> *ibid.*

<sup>182</sup> *ibid.*

<sup>183</sup> *ibid.*

case of *Zion v. Kurtz* is pivotal in corporate law, especially regarding the enforceability of shareholders' agreements in closely held entities, and it illustrates the complexities arising from differing state laws on corporate governance.<sup>184</sup> It is frequently referenced in discussions about corporate formalities, shareholder rights, and the critical nature of selecting an appropriate jurisdiction for incorporation.<sup>185</sup>

In the case of *E.K. Buck Retail Stores v. Harkert*, 157 Neb. 867, 61 N.W.2d 228 (1953), Walter E. Harkert, who owned a restaurant chain, encountered financial challenges. To address these issues, he sold his fixtures and equipment to investors with the intention of repurchasing them over a five-year period. Earl K. Buck, representing E.K. Buck Retail Stores, entered into multiple agreements with Harkert. In 1937, Harkert incorporated his business as "Harkert Houses" and established a Stockholders Control Agreement with Buck. This agreement involved Buck forgiving debts amounting to \$55,650 and investing an additional \$53,625 for a 40% stake in the company and equal representation on the board.<sup>186</sup> The board was to consist of four members, with two appointed by Harkert and two by Buck. Disputes later emerged, prompting Harkert to question the agreement's validity, arguing it breached constitutional rules on corporate governance.<sup>187</sup> The court analyzed the agreement's validity, considering whether it violated constitutional or statutory provisions by allowing equal board representation despite unequal stock ownership.<sup>188</sup> Additionally, the court examined if the agreement conflicted with public policy by potentially limiting shareholders' voting rights. The court reviewed Article XII, Section 5 of the Nebraska Constitution, which guarantees shareholders the right to cumulative voting in director elections.<sup>189</sup> Cumulative voting is a method of voting for corporate directors in which each shareholder may allocate their total votes (equal to the number of shares held

---

<sup>184</sup> *Zion v. Kurtz*, 50 N.Y.2d 92 (1980).

<sup>185</sup> *ibid.*

<sup>186</sup> *E.K. Buck Retail Stores v. Harkert*, 157 Neb. 867, 61 N.W.2d 228 (1953)

<sup>187</sup> *ibid.*

<sup>188</sup> *ibid.*

<sup>189</sup> *ibid.*

multiplied by the number of directors to be elected) in any manner they choose—either casting all votes for a single candidate or distributing them among several candidates. This method is designed to increase minority shareholder representation on the board of directors.<sup>190</sup> It concluded that the agreement did not violate these rights, as it represented a private contract between consenting parties and did not change statutory voting processes.<sup>191</sup> Furthermore, the court determined that stockholder agreements designed to promote financial stability and mutual benefit do not inherently oppose public policy, provided they do not breach statutory regulations or harm other stakeholders. Ultimately, the Nebraska Supreme Court affirmed the Stockholders Control Agreement's validity, ruling it did not contravene constitutional provisions or public policy.<sup>192</sup> However, the court overturned a monetary judgment awarded to Buck, indicating that claims for damages related to alleged mismanagement should be pursued on behalf of the corporation rather than individually.<sup>193</sup>

---

<sup>190</sup> Black's Law Dictionary (11th edn, Thomson Reuters 2019) sub verbo 'cumulative voting'.

<sup>191</sup> E.K. Buck Retail Stores v. Harkert, 157 Neb. 867, 61 N.W.2d 228 (1953)

<sup>192</sup> *ibid.*

<sup>193</sup> *ibid.*

## Conclusion

This research has shown that although shareholders' agreements play an increasingly crucial role in influencing corporate governance and safeguarding minority rights on a global scale, and the existing legal framework in Azerbaijan is significantly lacking in this domain. Even though the principle of freedom of contract is formally acknowledged in the Azerbaijani Civil Code, the absence of explicit statutory recognition, comprehensive regulations, and established judicial precedents creates uncertainty and ineffectiveness in the practical enforcement of shareholders' agreements.

This thesis is based on a comparative examination of the laws and practices of Azerbaijan and the United States, focusing specifically on the Model Business Corporation Act (MBCA) and the Delaware General Corporation Law (DGCL), to demonstrate how an established legal framework facilitates the adaptable yet enforceable implementation of shareholders' agreements. The analysis of U.S. legal precedents highlights the significance of these agreements in empowering shareholders, protecting the rights of minority stakeholders, resolving impasses, and fostering long-term stability in business operations.

The judicial precedents indicate that without clear statutory guidelines, shareholders in Azerbaijan face the risk of forfeiting vital protections and governance mechanisms. The legal frameworks employed in the United States, especially concerning closely held corporations, present persuasive models for potential reforms that could be tailored to fit the Azerbaijani legal landscape with suitable adjustments.

Consequently, it is advisable for Azerbaijan to implement legislative changes that clearly acknowledge and govern shareholders' agreements. These reforms should focus on formalizing their enforceability, offering clarity regarding their allowable scope, and creating frameworks for the judicial or arbitral resolution of associated conflicts. By drawing on the experiences of the United States, such modifications would enhance the predictability of corporate governance

in Azerbaijan, boost investor confidence, and align the nation's corporate practices with global standards.

In summary, it is essential for shareholders' agreements in Azerbaijan to evolve beyond their status as ambiguous or informal instruments within the business landscape. They should be seamlessly incorporated into the legal framework as a dynamic yet sturdy mechanism for contemporary corporate governance. The cornerstone of this evolution is the principle of contractual freedom, which allows shareholders to tailor their internal arrangements to meet their unique requirements, if public interests are protected. Establishing this principle through explicit legislative acknowledgment would promote both predictability and enforceability. Ultimately, the principle of contractual freedom should function not only as a fundamental doctrine of private law but also as a catalyst for corporate advancement and economic development in Azerbaijan.

## **Bibliography**

### **Statutory and Soft Law**

#### **Azerbaijan**

1. Civil Code of the Republic of Azerbaijan (Dec. 28, 1999).
2. Law of the Republic of Azerbaijan on State Registration and the State Register of Legal Entities, No. 560-IIQ (Dec. 12, 2003).
3. The Law of the Republic of Azerbaijan on Joint-Stock Companies (July 12, 1994).

#### **United States**

4. Model Business Corporation Act (2016 Revision).
5. Delaware General Corporation Law, Del. Code Ann. tit. 8, §§ 101–398 (2024).

### **Case Law**

#### **United States**

##### **Federal**

1. Donahue v. Rodd Electrotypes Co. of New England, Inc., 367 Mass. 578 (1975).

##### **New York State**

2. Galler v. Galler, 32 N.Y.2d 16 (1973).
3. Zion v. Kurtz, 50 N.Y.2d 92 (1980).
4. Ingle v. Glamore Motor Sales, Inc., 73 N.Y.2d 183, 535 N.E.2d 1311, 538 N.Y.S.2d 771 (1989).

##### **Nebraska**

5. E.K. Buck Retail Stores v. Harkert, 157 Neb. 867, 61 N.W.2d 228 (1953)

### **Books and Book Chapters**

6. International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis (Sebastian Mock, Kristian Csach & Bohumil Havel eds., De Gruyter 2018).
7. Rudolf B. Schlesinger, Hans W. Baade, Mirjan R. Damaška, and Peter E. Herzog, Comparative Law: Cases, Text, Materials (5th edn, Foundation Press 1988).

### **Law Reviews and Law Journals**

8. Elson, Alex. "Shareholders Agreements, A Shield for Minority Shareholders of Close Corporations." *The Business Lawyer* 22, no. 2 (January 1967): 449-457.
9. Maja B. Filipović, How Can Shareholders' Agreements Shape Corporate Governance and Directors' Liability? 9(2) *InterEULawEast J. Int'l & Eur. L. Econ. & Market Integrations* 193 (2023).
10. Paulius Miliauskas, Shareholders' Agreement as a Tool to Mitigate Corporate Conflicts of Interest, 6 *Int'l J. Priv. L.* 109 (2013).
11. Karimov E, 'Shareholders' Agreement in Azerbaijani Law' (2012) 1 *Baku Law Journal*.
12. Dooley, Michael P., and Michael D. Goldman. 2001. "Some Comparisons Between the Model Business Corporation Act and the Delaware General Corporation Law." *The Business Lawyer* 56 (2): 737-766.
13. Corporation Law Committee of the Association of the Bar of the City of New York. "The Enforceability and Effectiveness of Typical Shareholders Agreement Provisions." *The Business Lawyer* 65, no. 4 (August 2010): 1153-1203.
14. Duffy, Michael J. "Shareholders Agreements and Shareholders' Remedies – Contract Versus Statute?" *Bond Law Review*, vol. 20, no. 2, 2008, Article 1.
15. Barwari A, Saeed L and Aree M, 'The Protection of Minority Shareholders within the Legal Framework: Conceptual Evidence from Turkey' (2019) 9 *Journal of Advanced Research in Law and Economics*.
16. Brožová S, 'The Nature and Legal Effects of Shareholders Agreements in the Czech and Slovak Private Law and its Interpretation' (2019) 15(31) *European Scientific Journal*.
17. Julian Velasco, 'The Fundamental Rights of the Shareholder' (2006) 40 *UC Davis Law Review* 407.

## Internet sources

18. Azerbaijan Investment Company OJSC, 'Shareholders' Agreement Was Signed Between Azerbaijan Investment Company OJSC and Hungary's HELL Group Company' <https://www.aic.az/en/news/1302/shareholders-agreement-was-signed-between-azerbaijan-investment-company-ojsc-and-hungarys-hell-group-company> accessed 06 June 2025.
19. BP, 'BP, SOCAR and Azerbaijan Investment Company Sign Shareholders' Agreement' (BP, 1 February 2024) [https://www.bp.com/en\\_az/azerbaijan/home/news/press-releases/bp-SOCAR-and-Azerbaijan-Investment-Company-sign-shareholders-agreement.html](https://www.bp.com/en_az/azerbaijan/home/news/press-releases/bp-SOCAR-and-Azerbaijan-Investment-Company-sign-shareholders-agreement.html) accessed 06 June 2025.
20. Taxes.gov.az, 'Umumi Məlumat' <https://www.taxes.gov.az/en/page/umumi-melumat> accessed 1 February 2025.
21. e-taxes.gov.az, 'Commercial Checker' <https://www.e-taxes.gov.az/ebyn/commercialChecker.jsp> accessed 06 June 2025.
22. Clyde & Co, 'The Role of a Shareholders' Agreement in Corporate Governance' (Clyde & Co, October 2024) <https://www.clydeco.com/en/insights/2024/10/the-role-of-a-shareholders-agreement> accessed 06 June 2025.
23. JE Fisch, Private Ordering and the Role of Shareholder Agreements (Law Working Paper No 538/2020, ECGI, August 2020) [https://ecgi.global/sites/default/files/working\\_papers/documents/fischfinal.pdf](https://ecgi.global/sites/default/files/working_papers/documents/fischfinal.pdf) accessed 06 June 2025.
24. LK Shields, 'Shareholders' Agreements: A Practical Analysis' (14 December 2017) <https://www.lkshields.ie/news-insights/publication/shareholders-agreements-a%20practical-analysis> accessed 06 June 2025.